

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EMMETT SMITH,

Defendant-Appellant.

UNPUBLISHED

June 10, 2003

No. 239362

Wayne Circuit Court

LC No. 01-003427

Before: Talbot, P.J., and Neff and Kelly, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial conviction of attempted larceny from a person, MCL 750.357; MCL 750.92. Defendant was sentenced to six months in jail and two years' probation. We affirm.

Defendant first argues that the trial court's findings of fact were clearly erroneous. We disagree. This Court reviews factual findings for clear error. *People v Rodriguez*, 251 Mich App 10, 25; 650 NW2d 96 (2002). A finding of fact is clearly erroneous if, after a review of the entire record, an appellate court is left with a definite and firm conviction that a mistake has been made. *People v Swirles (After Remand)*, 218 Mich App 133, 136; 553 NW2d 357 (1996). "An appellate court will defer to the trial court's resolution of factual issues, especially where it involves the credibility of witnesses." *People v Cartwright*, 454 Mich 550, 555; 563 NW2d 208 (1997).

The trial court found that the complainant gave defendant a ride to the casino pursuant to an agreement that defendant would pay complainant \$20 for gas. Defendant gave the complainant \$20. Defendant then attempted to take back the \$20 along with the rest of the complainant's money.

Defendant asserts that the trial court's above findings were inconsistent with the evidence. Defendant specifically argues that the court failed to address the discrepancy between the \$140 that defendant purportedly took from the complainant and the \$98 that the police confiscated from defendant's pocket. We disagree. The confiscated money was not the only amount of money that defendant had on his person. Defendant testified that he had an additional \$500 in his wallet. While the court made a specific finding that defendant gave the complainant \$20 and then snatched it from her, the court made no finding with respect to the specific amount

of additional money that defendant took from the complainant against her will. We are satisfied that the court's findings were not clearly erroneous.

Defendant also argues that the trial court erred in finding the complainant to be a credible witness where her testimony conflicted with that of the police officer and that of defendant. This argument challenges the credibility of witnesses. We will not invade the province of the factfinder and assess credibility anew when considering the proofs in a light most favorable to the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). In light of the above, we conclude that the court's findings of fact were properly supported by the evidence.

Defendant's second argument questions the sufficiency of the evidence to sustain a conviction of attempted larceny from a person. To determine whether the evidence presented at trial was sufficient to sustain the conviction, this Court views the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt. *People v Grayer*, 252 Mich App 349, 355; 651 NW2d 818 (2002).

Larceny is defined as the taking and carrying away of the property of another, done with felonious intent and without the owner's consent. *People v Malach*, 202 Mich App 266, 270; 507 NW2d 834 (1993). This Court, in *People v Cain*, 238 Mich App 95; 605 NW2d 28 (1999), defined the elements of larceny as

(1) an actual or constructive taking of goods or property, (2) a carrying away or asportation, (3) the carrying away must be with a felonious intent, (4) the subject matter must be the goods or personal property of another, (5) the taking must be without the consent and against the will of the owner. [*Id.* at 120, citing *People v Anderson*, 7 Mich App 513, 516; 152 NW2d 40 (1967).]

An essential element of larceny from the person is that it was accomplished by stealing from the person of another. *People v Gadson*, 348 Mich 307, 310; 83 NW2d 227 (1957). Any movement of goods is sufficient to constitute asportation. *People v Alexander*, 17 Mich App 30, 32; 169 NW2d 190 (1969). The specific intent necessary to commit larceny is the intent to steal another person's property. *Id.* An attempt offense consists of (1) an attempt to commit an offense prohibited by the law and (2) any act towards the commission of the intended offense. *People v Thousand*, 465 Mich 149, 164; 631 NW2d 694 (2001).

We conclude that the complainant's testimony, that defendant grabbed her money out of her hand, refused to return the money when complainant demanded it, and attempted to leave the car with it, establishes the necessary elements of attempted larceny from the person and supports defendant's conviction.

Finally, defendant argues that his conviction was against the great weight of the evidence. The test is whether the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand. *People v Gadomski*, 232 Mich App 24, 28; 592 NW2d 75 (1998).

We are not persuaded by defendant's claim that the complainant's testimony was incredible in light of defendant's which, defendant asserts, was corroborated by the testimony of

the arresting police officer. We conclude that the evidence does not preponderate against the verdict.

Affirmed.

/s/ Michael J. Talbot

/s/ Janet T. Neff

/s/ Kirsten Frank Kelly